

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	MB Docket No. 13-249
Revitalization of the AM Radio Service)	

**REPLY TO OPPOSITION TO
PETITION FOR RECONSIDERATION**

Prometheus Radio Project (“Prometheus”) respectfully submits this reply to the National Association of Broadcasters’ (“NAB”) opposition¹ (“NAB Opposition”) to Prometheus’ Petition for Reconsideration² of the amendment to 47 CFR §74.1201(g) as adopted in the Commission’s February 23, 2017 order in Docket No. 13-249, *Second Report and Order*, 32 FCCRcd 1724 (2017) (“Order”).³

NAB fails to offer any convincing support for its argument that the Order’s removal of the proposed 40-mile limit for placing translators was a logical outgrowth of the proposed rule, and does not rebut Prometheus’ showing to the contrary. Instead, NAB simply restates the Order’s flawed conflation of “core service area” with “primary service area,” offering no response to the distinction Prometheus draws between of these two different concepts. NAB also fails to acknowledge, much less rebut, Prometheus’ point that the Order is arbitrary and capricious because it fails to consider an important aspect of the problem and because it did not

¹ Opposition of the National Association of Broadcasters to the Petition for Reconsideration of Prometheus Radio Project and Opposition to Motion for Extension of Time, MB Docket No. 13-249 (May 19, 2017)(“NAB Opposition”).

² Petition for Reconsideration of Prometheus Radio Project, MB Docket No. 13-249 (Apr. 10, 2017)(“Petition for Reconsideration”).

³ Notice of the Petition for Reconsideration was published in the Federal Register on May 4, 2017. 82 FR 20861 (May 4, 2017).

conduct the analysis required by the Local Community Radio Act of 2010.⁴ Contrary to NAB's argument that the fact that there have not as yet been many applications seeking locations beyond the 40-mile limit proves that there is—and will be—no harm to LPFM, the application that has been filed since the Order went into effect demonstrates the exact harm that the Commission was required to consider under the LCRA. Several LPFM stations would have severely reduced relocation capacity as a result of this translator application. Finally, NAB misstates the scope and impact of the Order, ignores the effect of the upcoming translator application window, and distorts Prometheus' point that the benefits of noncommercial LPFM service cannot be replicated by commercial AM radio.

I. NAB makes no attempt, beyond restating the Order's flawed justification, to rebut the argument that the abandonment of the core service area was not a logical outgrowth of the FNPRM

NAB makes no attempt to rebut Prometheus' argument that the outright abandonment of a set distance-based limitation to clearly define the core service area of AM stations was not a logical outgrowth of the proposed rule change.⁵ Instead, NAB simply restates the Order's flawed conflation of "core service area" with "primary service area," offering no response to the distinction Prometheus draws between of these two different concepts.

As the Commission explained in its 2015 Further Notice of Proposed Rulemaking ("FNPRM"),⁶ a set distance limitation functions as a "constraint to prevent high-power AM stations from using fill-in translators in locations outside their *core* service area,"⁷ not their

⁴ Pub. L. 111-371 (2011).

⁵ Petition for Reconsideration at 4-7.

⁶ First Report and Order, Further Notice of Proposed Rule Making, and Notice of Inquiry, 30 FCCRcd 12145 (2015) ("FNPRM").

⁷ FNPRM, 30 FCCRcd at 12174 ¶68 (citing *In the Matter of Amendment of Serv. & Eligibility Rules for Fm Broad. Translator Stations*, 24 FCCRcd 9642, 9649 n.45 (2009))(emphasis added); *see also* Petition for Reconsideration at 6.

primary service area, which is a completely unrelated measurement. In 2009, the Commission set this limit at 25 miles for high-power stations.⁸ The FNPRM proposed to offer slightly more flexibility by changing the “lesser of the 2mV/m contour or 25 miles” language to the greater of the two. As the Commission has previously noted, some stations have “extremely large 2mV/m daytime contours.”⁹ Therefore, the Commission expressed in the FNPRM its “continue[d] desire to limit cross-service translator use to an AM station’s core market”¹⁰ and proposed a 40-mile limit.

The Commission’s purported justification (to which NAB simply defers) for eliminating any set distance limitation and instead relying on the station’s contour as the only limitation, is that it “has already held that the 2 mV/m contour in all cases constitutes an AM station’s primary service area....”¹¹ But as the Petition for Reconsideration explains, the core service area is necessarily less than the 2mV/m contour for high-power stations,¹² a point NAB does not attempt to rebut. The Commission’s 2009 Order explained that, although the 2mV/m daytime contour depicts the core market area for stations operating on 2.5kW or less, the 25-mile limit was needed for stations operating above 2.5kW because those stations’ contours exceeded their core service area.¹³ The “primary service area,” on the other hand, which “[m]eans the service area of a broadcast station in which the groundwave is not subject to objectionable interference or

⁸ See FNPRM, 30 FCCRcd at 12174 ¶68 (referencing *Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, Report and Order, 24 FCCRcd 9642, 9658 (2009)(“2009 Order”).

⁹ 2009 Order, 24 FCCRcd at 9658.

¹⁰ FNPRM, 30 FCCRcd at 12174 ¶68.

¹¹ *Order*, 32 FCCRcd 1724, 1726 ¶4 (2017); see NAB Opposition at 6.

¹² Petition for Reconsideration at 6-7.

¹³ 2009 Order, 24 FCCRcd at 9658.

objectionable fading,”¹⁴ is completely irrelevant to the concept and purpose of maintaining a core service area limitation for the purposes of limiting translator placements. The Petition for Reconsideration offers examples of the Commission’s own citations in the Order that directly refute its claim that the core service area is the same as the primary service area,¹⁵ as well as examples of where the FNPRM reaffirms the distinction by referring to each concept in their respective contexts.¹⁶ NAB does not acknowledge, much less refute, these examples.

By failing to give notice of any intent to eliminate set distance limitations defining a station’s core service area, the Commission did not provide opportunity to develop a record as to the impact of this change on affected LPFM stations. NAB does not challenge this practical reality that LPFM stations, even more frequently than full-power stations, must relocate their transmitters, and that the vastly larger area afforded for AM stations to erect FM translators under the Order will greatly impinge on the ability of LPFM licensees to relocate. NAB’s characterization of the Order as simply “provid[ing] AM radio broadcasters a bit more flexibility”¹⁷ completely ignores Exhibits C, D, and E of the Petition for Reconsideration. These submissions show the sheer magnitude of the increased area available for AM stations to locate translators without the 40-mile restriction across the country.¹⁸ The fact that many of these newly-available areas overlap indicates that there will be tremendous demand among multiple AM stations to relocate their existing translators, to acquire existing translators and relocate them to these areas, and to apply for new translators in the upcoming window,¹⁹ and that it is only a

¹⁴ 47 C.F.R. §73.14.

¹⁵ Petition for Reconsideration at 6-7.

¹⁶ See Petition for Reconsideration at 7 n.19 and accompanying text.

¹⁷ NAB Opposition at 9.

¹⁸ See Petition for Reconsideration at 10-11, Exhibits C-E.

¹⁹ See *infra*.

matter of time before LPFM stations in these areas are squeezed out.²⁰ NAB's silence as to this impact is deafening.

II. NAB's Opposition does not address, much less rebut, Prometheus' arguments that the Order is arbitrary and capricious

NAB's Opposition does not address, much less rebut, Prometheus' argument that the Order is arbitrary and capricious because the decision to remove the 40-mile restriction and abandon the core service area "entirely failed to consider an important aspect of the problem."²¹ The Order did not consider, much less resolve, the question of the adverse impact it will have on LPFM, raised by Prometheus in its ex parte presentation on February 16, 2017,²² and NAB does not offer any rebuttal to this impact other than to label it as "speculative" and incorporate by reference prior flawed arguments that reduced relocation capacity will not be a problem because of interference protections.

NAB, like the Order, ignores the problem of translators that will inevitably be tangent to an LPFM, where those translators have contours that nearly touch but do not overlap the LPFM contour. When the LPFM contour is tangent, or near tangent, to the contours of multiple cross-service translators such that it cannot move in any direction, that LPFM station is essentially chained to its current location. Exhibit F of the Petition for Reconsideration illustrates this problem with the example of a Houston LPFM station that is currently boxed in by FM translators broadcasting AM stations.²³

²⁰ See Petition for Reconsideration at 10-11.

²¹ See Petition for Reconsideration at 11 (*citing Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

²² See Petition for Reconsideration at 11; Ex Parte Letter from Prometheus Radio Project, MB 13-249, Feb. 16, 2017, available at <https://www.fcc.gov/ecfs/filing/102160585211674>.

²³ See Petition for Reconsideration at 12, Exhibit F.

NAB suggests that, because in the brief time since the Order went into effect only one station has applied to move a translator more than 40 miles from its transmitter, the boxing in problem does not and will not exist as a result of the Order. This could not be further from the truth, and in fact, the application that NAB mentions would cause the exact harm that Prometheus raised in the Petition for Reconsideration, and which the Commission ignored in passing the Order. As the attached Exhibit A demonstrates, AM station KVTB's application to move translator K238CC to a location 57 miles away from KVTB's transmitter would cause three LPFM stations to be short spaced with K238CC, eliminating roughly 50% of those LPFM stations' potential relocation areas.²⁴ Exhibit B shows the relocation area of one of these stations, KRQP-LP, which would be lost due to this translator's proposed location.²⁵

NAB also incorrectly claims that "all [the Order] does is provide AM radio broadcasters a bit more flexibility to place existing translators."²⁶ It was well known at the time of the Order that the Commission was planning to open a window for new translators, and indeed a public notice announcing two upcoming windows, one of which will be for Class A and B AM stations, is currently on circulation at the Commission.²⁷ Absent a stay or reconsideration, these windows will be conducted under the rules as revised by the Order. This window will lead increased instances of relocated and new translators boxing in LPFM stations beyond 40 miles from AM transmitters. By then stations will have had more time to locate potential sites, find and purchase translators that can be placed at these locations, and develop the site and engineer the move of

²⁴ See Exhibit A.

²⁵ See Exhibit B.

²⁶ NAB Opposition at 9.

²⁷ See "Announcement of FCC Window for AM Stations to File For New FM Translators Coming Very Soon," Broadcast Law Blog, May 14, 2017, <http://www.broadcastlawblog.com/2017/05/articles/announcement-of-fcc-window-for-am-stations-to-file-for-new-fm-translators-coming-very-soon/>.

existing translators or placement of new translators. Because purchase prices are currently high due to limited supply and high demand, it is also likely that it will be more affordable to acquire a translator during the upcoming window.

Finally, NAB does not rebut Prometheus' argument that the Commission's action was arbitrary and capricious because it is inconsistent with the requirements and purposes of the LCRA.²⁸ Nor does it challenge the fact that at no point in the Order did the Commission address these inconsistencies or rebut the contention that incumbent LPFM stations will be chained to their current location as the gaps around them are filled by cross-service translators.²⁹ Instead, NAB focuses its Opposition on distorting Prometheus' important point that the benefits of noncommercial LPFM service cannot be replicated by commercial AM radio. In making this point, Prometheus is not denigrating commercial AM radio or the valuable purposes that it has long served. Rather, Prometheus' point is that noncommercial LPFM service has different objectives that are also worthy.³⁰ Indeed, noncommercial radio, both full-power and low-power, serve as important entry points for those in the radio industry, including the large number of people in commercial radio who began their careers in low-power radio. The distinct purpose and benefits of LPFM have long been heralded by the Commission, including current Commissioners,³¹ and are enshrined in the goals and requirements of the LCRA.³² The Commission's decision is not consonant with these stated goals.

²⁸ See Petition for Reconsideration at 13-17.

²⁹ See Petition for Reconsideration at 14.

³⁰ See Petition for Reconsideration at 13-17.

³¹ See *e.g.*, Petition for Reconsideration at 16.

³² See Petition for Reconsideration at 13-15.

CONCLUSION

The Commission should reconsider and vacate its Order insofar as it eliminates set distance limitations on translators and revert to the restriction proposed in the FNPRM that would have limited the placement of an FM translator such that the translator's 60 dB μ contour may not extend beyond a 40-mile radius from the AM station. It should also issue a new FNPRM that will address adequately protecting LPFM stations from being boxed in by FM translators, and should grant all other relief as may be just and equitable.

Respectfully submitted,

/s/ Andrew Jay Schwartzman

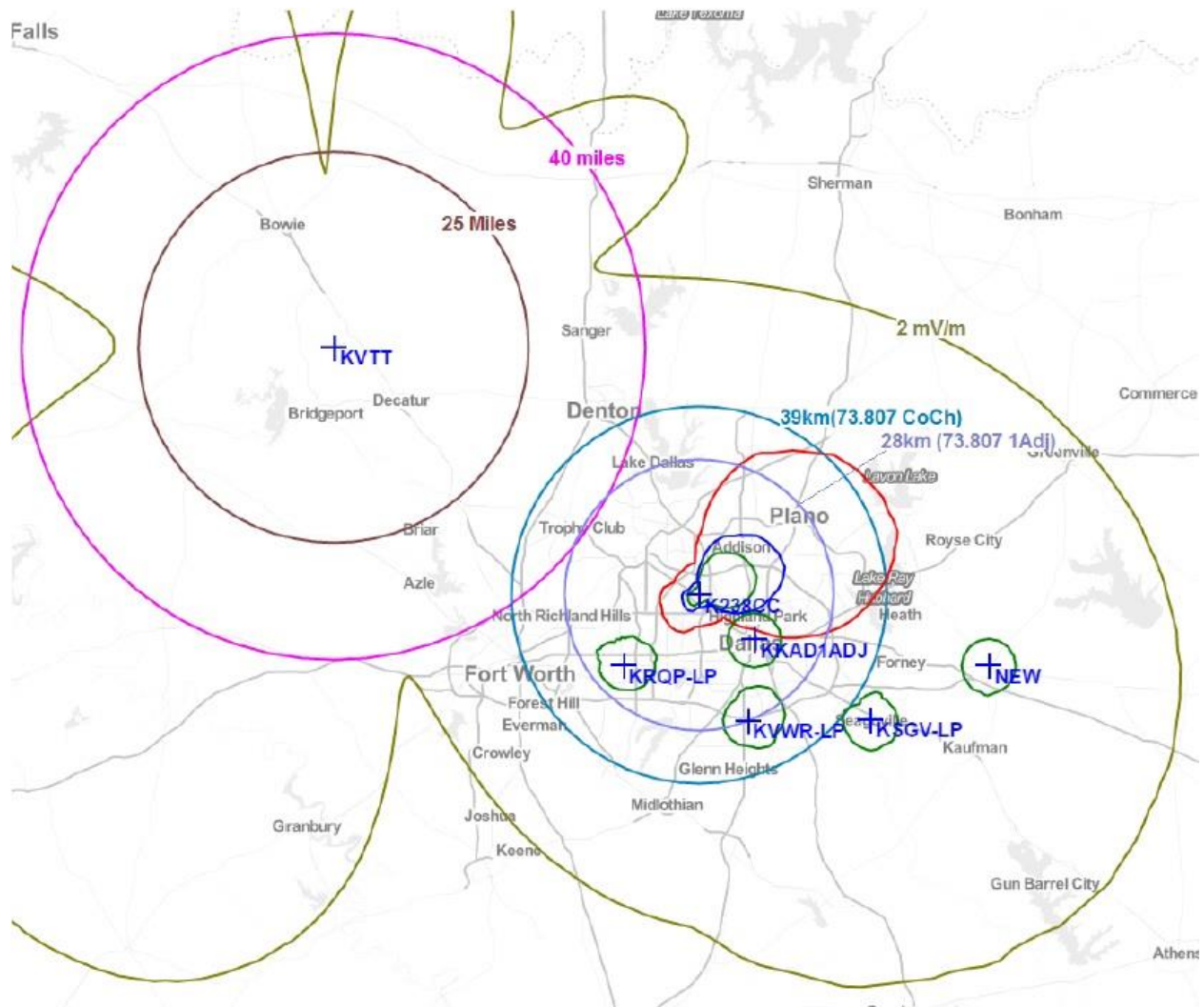
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EXHIBIT A

KVTT's Proposed Location for Translator K238CC

AM station KVTT has an outstanding construction permit application (BPFT-20170410AFR) to move translator K238CC to a location 57 miles away from KVTT's transmitter. This location would cause three LPFM stations to be short spaced with K238CC: KKAD-LP (15km, 28km required), KVWR-LP (28km, 39km required) and KRQP-LP (21km, 39km required). This map shows KVTT's transmitter along with its 2mV/m daytime contour, a circle representing the 40-mile radius around the transmitter, the proposed translator location, and the three LPFM stations and their F(50,50) 60 dBu service contours. As none of these three LPFM stations can reduce their short spacing with the proposed K238CC, the K238CC relocation would eliminate roughly 50% of those LPFM stations' potential relocation areas. Exhibit B demonstrates the lost relocation for one of these affected stations, KRQP-LP.

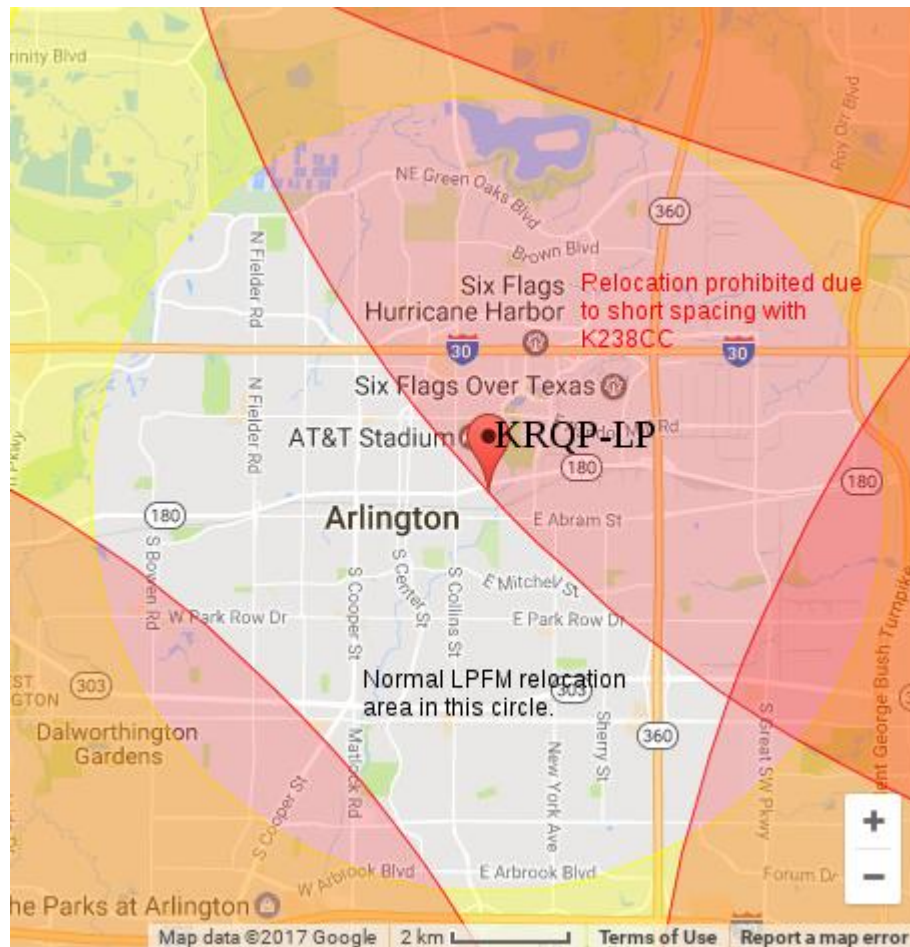


Map courtesy of REC Networks

EXHIBIT B

The Boxing-in of KRQP-LP

This map demonstrates the area that KRQP-LP in Arlington, TX would be precluded from relocating to due to the proposed location of FM translator K238CC (rebroadcasting KVTB(AM)). The circle around KRQP-LP's location represents the 5.6km distance that the station could relocate its transmitter via a minor modification, absent any waivers. KRQP-LP would be prohibited under current spacing rules from relocating to the shaded area to the northeast due to KVTB's proposed FM translator.



CERTIFICATE OF SERVICE

I, Drew Simshaw, certify that a copy of the foregoing Reply to Opposition to Petition for Reconsideration was served this 30th day of May, 2017, to the following:

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